

4a and extends from there into the cartridge/cassette to surround a space 4b, empty of solid material, for reception of the sample.--.

IN THE CLAIMS:

25. (amended) An assaying device as claimed in claim 24, the space being empty of solid material.

31. (amended) An assaying device as claimed in claim 30, the space being empty of solid material.

REMARKS

The action mailed 04/28/99 has been received and its contents carefully noted.

In the above section of the amendment, IN THE SPECIFICATION, the amendment of 11/16/98 to the specification at page 3, line 19, between "of a pipette." and "The cap/cover", has been canceled and replaced with two changes: the typo "pace" has been corrected to --space--, and the term "empty" has been qualified by addition of the words --of solid material--, this last in view of the question raised by the rejection under 35 USC 112 in this action. The ability in the original drawings to see the curved line through the center of well/opening 4 in Fig. 1 means that space 4b is empty of solid material.

In coordination with the qualification of "empty" in the specification, claim 25 has been similarly amended above, in order to avoid the rejection of claims 25 and 26 under 35 USC 112 made in this action. Entry of this amendment under Rule 116(a) is requested at least for the purpose of placing claims 25 and 26 in better form for consideration on appeal.

Although not raised in the action of 04/28/99, the same issue seems to reside in claim 31, and it is therefore correspondingly amended above, with the same request that its amendment be

entered too for the purpose of placing it and its dependent claims in better form for consideration on appeal.

Turning now to the rejections of claims 1, 8 and 23-41 under 35 U.S.C. 102(b) on Senior, reconsideration is requested on the following grounds.

One of the basic principles of a "102" rejection is that the reference must show every feature mentioned in the claims. The Manual of Patent Examining Procedure, Section 2131, entitled "Anticipation - Application of 35 U.S.C. 102(a), (b), and (e)", quotes as follows: Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) - "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."; Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) - "The identical invention must be shown in as complete detail as is contained in the ... claim."

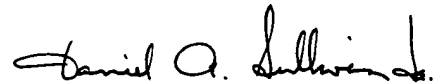
The REMARKS of the AMENDMENT of 11/16/98 listed elements and details of the claims which are not contained in Senior. Thus, it was pointed out with respect to claims 1, 8 and 23 that Senior's example has a situation where sample can reside out of the top of Senior's opening and that even Senior's paragraph a. does not inherently mean a sealing of a top of an opening. This matter of whether there is a sealing of the top of an opening is the only feature of the claims responded to in the final action of 4/28/99 and reconsideration is requested on the basis of the explanation of this paragraph.

However, the AMENDMENT of 11/16/98 also pointed out other claimed details that are not to be found in Senior. This application should not be allowed to proceed to appeal with claims present containing claimed elements clearly finding no Section 102 basis in Senior. Those

claims should be indicated as allowable. These include: claims 24-26 and 30-32 relating to the space empty of solid material for reception and retention of sample; claim 27 on a preferred location of the well/opening not shown in Senior; claims 28, 29, 33 and 34, where there is a binding of the cap/cover against the top of the well/opening; claim 35 - two test strips; claim 36, the channel between the well/openings in Fig. 3; claims 37 and 38 - the snap-together features of Figs. 4 and 5; claims 39 and 40 on the structure-method relationships totally different from Senior's practice of placing the bibulous member in a urine stream; and the photocopier method of claim 41, compared to Senior's transient, reader-based method.

On the basis of the above amendments and remarks, reconsideration of the rejections and allowance of claims 1, 8 and 23-41 are requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. Sullivan, Jr.", with a stylized, cursive script.

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